



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

circle inclosed in a square. Toward the middle of the circle, which is four feet in diameter, the twelve signs of the Zodiac are seen arranged upon a line, not exactly circular, but terminating spirally, the beginning being made by the Lion. Within these signs are the northern constellations, among which the Great Bear is particularly obvious, and placed precisely in the centre of the planisphere. It is the only one of the twenty constellations thus enclosed, which, in its figures, offers any analogy to the modern forms. Five asterisms stand on the same line as the zodiacal signs, and fifty one constellations of the lower hemisphere are without the Zodiac. The constellations are accompanied with hieroglyphics, which may be presumed to express their names. Should it appear, on examination, that this work is executed with scientific accuracy, and that the constellations of the Zodiac can be identified with those of our historical astronomy, these hieroglyphical characters may throw important light on the subject of decyphering, already carried so far by the late researches of M. Champollion.

Finally, this monument, after withstanding the assaults of saws, chisels, and gunpowder, of kachefs, kiayas, and consuls, and, more than all, of three thousand years, is in perfect preservation, and changed in nothing from its primitive state, but by the smoke of the torches with which it was surveyed by the numerous travellers in Egypt before its removal; which has rather improved its appearance, by a dark tint approaching that of bronze.

---

ART. XII.—*Report made to the General Assembly of the State of Louisiana, of the Plan of the Penal Code for the said State. By Edward Livingston, Member of the House of Representatives from the Parish of Plaquemines.* 8vo. New Orleans, 1822.

THE preceding numbers of our journal have contained ample evidence, we trust, of our hearty cooperation in the furtherance of an object, which, while it is the cause of enlarged and enlightened humanity all over the civilized world, is emphatically so in this country, where every thing conducive to the improvement of man as a social being, is a kind of indi-

genous production of the soil. We allude to the generous endeavors of philanthropic individuals in the present age, to investigate, establish, and spread abroad a liberal and rational theory of penal jurisprudence, and to the zeal with which those endeavors have been seconded by the legislative bodies of America at least, if not of Europe. In examining the work now before us, and transferring to our pages such extracts from it as may suffice to exhibit a specimen of its character and execution, of the high-minded views of public policy, the strain of manly and animated eloquence, the powerful reasoning, the comprehensiveness and accuracy in details, by which it is every where pervaded and marked, we shall only be continuing our humble exertions to contribute to the diffusion of genuine principles of benevolence and justice.

Mr Livingston's Report was made in consequence of an act of the General Assembly of Louisiana relative to the criminal laws of that state, passed in February, 1820, which, after adverting in the preamble to the primary importance of judicious criminal laws to every well regulated state, and the defectiveness of those already existing there, proceeds to declare that a person should be chosen by the legislature to prepare and present to them the *projet* of a suitable penal code for Louisiana. This honorable task was accordingly assigned to Mr Livingston, whom, with a confidence equally flattering to him and creditable to the state, the legislature appointed to carry their designs into execution; and to these proceedings we are indebted for the Report. As this is the first instance, we believe, in our country, in which a radical reform of the criminal laws of a state has been systematically and deliberately undertaken, we rejoice that the attempt was commenced under such favorable auspices. We congratulate the state of Louisiana that so many propitious circumstances have conspired, in the present experiment, to give it a chance of fair and unembarrassed trial, so far as the intrinsic perfection of the code can minister to its successful operation in practice. And we consider it as not the least propitious of these circumstances that a jurist was selected to prepare the plan, whose personal qualities are an adequate pledge and guarantee of the excellence of whatever comes from beneath his hand, and whose public standing is such that he must move in a sphere far above the influence of any inducements, but

an ambition to promote the best good of his country and his species. It was an advantage, also, of no inconsiderable weight, that only a single person was charged with this noble trust,—that Mr Livingston was not encumbered and shackled in the prosecution of his enquiries by a subjection to the opinions of associates in his important functions, but was wisely left to the guidance of his own individual intellect. Had the task of compiling a criminal code been committed to several persons instead of one alone, we believe the symmetry and excellence of the work would have been essentially impaired. If we reflect on the history of legislation, we shall find that seldom has an extensive and radical improvement been effected in the laws of a country, except where that country was subject to the despotic sway of a single ruler, who, like Justinian, Frederic, or Napoleon, could sweep away the ancient system, and substitute a new one in its stead, by the irresistible arm of power,—or where the will of a free people spontaneously deferred a temporary authority for that purpose to a Moses, a Charondas, a Lycurgus, or a Solon. And for the same reason we applaud the wisdom displayed by Louisiana in determining to have an entire new criminal code, which was peculiarly demanded by a state, over which three distinct nations have successively ruled ;—Spain and France, as their dominion passed away, each leaving behind her imperishable traces of her national peculiarities impressed on the laws of the people, and the adoption of that people into the great American family, having now superadded many features of the English jurisprudence to those already stamped upon the institutions of Louisiana by the French and Spaniards. In these circumstances it would have been idle to think for a moment of reforming the criminal law without beginning at the very root, and renovating the whole parent trunk, as well as the remoter branches. Even we, in the Atlantic states, where our laws, flowing from a single uniform source, can more easily be amended by means of partial changes, have seen enough of the effects of fastening the *purpureus pannus* over the blemishes in our laws,—enough of the evils of such imperfect legislation,—to be satisfied of the necessity of something different, in order to reform laws so multifarious in respect to their origin, as those of Louisiana.

Such are the favorable circumstances under which the duty

of reforming the criminal code of Louisiana has been entered upon by Mr Livingston, who lays before his constituents, in the Report under consideration, a general account of his plan, with an exposition of the most important among the changes proposed by him, and some detached parts of the projected code, as specimens of the execution of the work. The code is divided into six books. The first is composed of definitions of technical words, and directions with regard to the promulgation of the code; the second contains a preamble, and certain dispositions of a general and introductory nature; the third defines offences and designates their punishment; the fourth establishes a system of criminal procedure; the fifth contains rules of evidence applicable to trials for the several offences made punishable by the code; and the last relates to the establishment and government of a penitentiary. The preamble of the second book comprises an outline, sketched with a bold and masterly hand, of the whole science of penal law,—the great fundamental truths, which it is the purpose of the code to embody forth and put in practice; and an extract from this preliminary chapter, will fully unfold the objects, nature, and extent of the improvements projected by Mr Livingston.

‘The General Assembly of the state of Louisiana declare that their objects in establishing the following code are :—

‘To remove doubts relative to the authority of any parts of the penal law of the different nations by which this state, before its independence, was governed.

‘To embody into one law, and to arrange into system, such of the various prohibitions enacted by different statutes as are proper to be retained in the penal code.

‘To include in the class of offences acts injurious to the state and its inhabitants, which are not now forbidden by law.

‘To abrogate the reference, which now exists, to a foreign law for the definition of offences and the mode of prosecuting them.

‘To organize a connected system for the prevention, as well as for the prosecution and punishment of offences.

‘To collect into one code, and to express in plain language, all the rules which it may be necessary to establish, for the protection of person, property, condition, reputation, and government; the penalties and punishments attached to a breach of those rules; the legal means of preventing offences, and the

forms of prosecuting them when committed; the rules of evidence, by which the truth of accusations are [is] to be *tested*; and the duties of executive and judicial officers, jurors, and individuals, in preventing, prosecuting, and punishing offences: to the end that no one need be ignorant of any branch of criminal jurisprudence which it concerns all to know.

‘And to change the present penal laws, in all those points in which they contravene the following principles, which the General Assembly consider as fundamental truths, and which they have made the basis of their legislation on this subject, to wit:—

‘Vengeance is unknown to the law. The only object of punishment is to prevent the commission of offences. It should be calculated to operate,

‘First, on the delinquent, so as by seclusion to deprive him of the present means, and, by habits of industry and temperance, of any future desire to repeat the offence.

‘Secondly, on the rest of the community, so as to deter them by the example, from a like contravention of the laws. No punishments greater than are necessary to effect these ends ought to be inflicted.

‘No acts or omissions should be declared to be offences, but such as are injurious to the state, to societies permitted by the laws, or to individuals.

‘But penal laws should not be multiplied without evident necessity; therefore, acts, though injurious to individuals or societies, should not be made liable to public prosecution, where they may be sufficiently repressed by private suit.

‘From the imperfection of all human institutions, and the inevitable errors of those who manage them, it sometimes happens that the innocent are condemned to suffer the punishment of the guilty. Punishments should, therefore, be of such a nature that they may be remitted, and as far as possible, compensated, in cases where the injustice of the sentence becomes apparent.

‘Where guilt is ascertained, the punishment should be speedily inflicted.

‘Penal laws should be written in plain language, clearly and unequivocally expressed, that they may neither be misunderstood nor perverted; they should be so concise, as to be remembered with ease; and all technical phrases or words they contain, should be clearly defined. They should be promulgated in such a manner, as to force a knowledge of their provisions upon the people; and to this end, they should not only be published, but taught in the schools, and publicly read on stated occasions.

‘The law should never command more than it can enforce. Therefore, whenever, from public opinion or any other cause,

a penal law cannot be carried into execution, it should be repealed.

‘The accused, in all cases, should be entitled to a public trial, conducted by known rules, before impartial judges, and an unbiased jury ; to a copy of the act of accusation against him ; to the delay necessary to prepare for his trial ; to process to enforce the attendance of his own witnesses, and to an opportunity of seeing, hearing, and examining those who are produced against him ; to the assistance of counsel for his defence ; to free communication with such counsel, if in confinement ; and to be bailed in all cases, except those particularly specified by law.

‘No presumption of guilt, however violent, can justify the infliction of any punishment before conviction, or of any bodily restraint greater than is necessary to prevent escape ; and the nature and extent of the restraint shall be determined by law.

‘Perfect liberty should be secured of hearing and publishing the proceedings of criminal courts ; and no restraint whatsoever should be imposed on the free discussion of the official conduct of the judges, and other ministers of justice, in this branch of government.

‘Such a system of procedure in criminal cases should be established, as to be understood without long study ; it should neither suffer the guilty to escape by formal objections, nor involve the innocent in difficulties by errors in pleading. For this purpose amendments should be permitted in all cases where neither the accused nor the public prosecutor can be surprised.

‘Those penal laws counteract their own effect, which through mistaken lenity, give greater comfort to a convict than those which he would probably have enjoyed while at liberty.

‘The power of pardoning should be exercised only in cases of innocence discovered, or of certain and unequivocal reformation.

‘Provisions should be made for preventing the execution of intended offences whenever the design to commit them is sufficiently apparent.

‘The remote means of preventing offences do not form the subject of penal laws. The General Assembly will provide them in their proper place. They are the diffusion of knowledge by the means of public education, and the promotion of industry, and consequently of ease and happiness among the people.

‘Religion is a source of happiness here, and the foundation of our hopes of it hereafter ; but its observance can never, without the worst of oppression, form the subject of a penal code. All modes of belief and all forms of worship are equal in the eye of the law ; when they interfere with no private or public rights, all are entitled to equal protection in their exercise.

\*

\*

\*

‘The innocent should never be made to participate in the punishment inflicted on the guilty; therefore no such effects should follow conviction as to prevent the heir from claiming an inheritance through or from the person convicted. Still less should the feelings of nature be converted into instruments of torture by denouncing punishment against the children to secure the good conduct of the parent.

‘Laws intended to suppress a temporary evil should be limited to the probable time of its duration, or carefully repealed after the reason for enacting them has ceased.’ pp. 111—116.

These general maxims, all of indisputable truth, being laid down in the outset, serve as a clue to guide the legislator through the multiplicity of particular provisions, which compose the body of the code. But it is easier to arrive at general conclusions in political philosophy, than it is to determine the application of those conclusions to specified cases, or to reduce them to a practical form. What use Mr Livingston has made of them will appear from adverting to some of the changes proposed and defended by him in the *Report*:—changes, which, whether they are improvements, or innovations merely, are of sufficient importance to be entitled to attentive consideration.

We would not be of the number of those rash and intemperate innovators upon the established order of things, who mistake novelty for excellence, who deem an institution antiquated because it is old, and who would rush on precipitately in a career of bold and sweeping legislation, without duly weighing the dangerous consequences of their headlong course. Laws are so closely complicated and bound together by an infinite variety of delicate relations, and so powerful is the reciprocal action upon each other of laws and of public sentiment, that he must be endowed with more than human sagacity, who can look into future ages, and trace out the long chain of consequences, which may follow the introduction of a solitary change in existing institutions. It is not only the passing generations of men, whose interests are to be regarded, but those also which have not yet arisen to play their part on the stage of life, are deeply concerned in the question. But, on the other hand, while institutions, which have gained strength from being long associated with our prepossessions and habits, should never be discarded without the most powerful inducements,—still they, who have the control



and guidance of public sentiment, should take heed how they cling to ancient abuses for no other reason but that they are ancient. It is no proof of respect for the past to follow it blindly and implicitly ; because it is only what all time has sanctioned, not what has subsisted during all time, which is entitled to our veneration. Nay, if we listen as we ought to the voice of experience, she will tell us that time is the greatest of all innovators. Every thing admirable in the science or the arts of the present age is a new argument to show how incessantly time is innovating upon the institutions, usages, opinions, and principles of our forefathers. In truth, today is older than yesterday, and therefore, were the mere age of a doctrine to be regarded, the tenets of the present would have a stronger claim to be invested with the *prestige* of antiquity than those of the past. We should consider that, if they who went before us were giants and we are but pygmies, yet, as Fontenelle ingeniously observed, we stand upon their shoulders, and can therefore extend our view to comprehend a wider expanse of the intellectual horizon than their vision embraced. We possess not only the wisdom of the ancients, but the wisdom of the moderns also, by which to correct the errors and supply the deficiencies in the knowledge handed down to us from the sages of preceding times. And whatever attachment we may feel for institutions which our fathers established, which we were born under and bred to revere, and with which all the fondest recollections of our early years are associated,—as earnest inquirers after truth, we should fail in our duty to ourselves and posterity, if we did not come to the question of the expediency of such institutions wholly divested of any prepossessions, apart from our judgment of their intrinsic excellence.

It is the more necessary to entertain this feeling in connexion with our criminal laws, inasmuch as their substance, their system, their technical language, and their genuine spirit belong to a rude and uncivilized period in man's history. The peculiar provisions of the common law, whether of Saxon or Norman parentage, were devised amid the civil broils and the universal ignorance of the middle ages ; and gloriously distinguished, as this system was, among all those which arose at the same period, by the rare infliction of torture and by the prevalence of a public trial by a jury of peers, it

bore, nevertheless, too evident traces of the barbarian genius which presided over its construction. These considerations ought to be carried along with us in examining Mr Livingston's Report, because it recommends some departures from the generally received principles of criminal law, which are bold innovations even in this country, where, as he himself observes, 'there is no antiquity to create a false veneration for abuses.'

Mr Livingston proposes, among other smaller changes, four principal deviations from the crimes designated by the common law, all which deviations are defended with great eloquence, and with a cogency of reasoning which it is certainly difficult to withstand. The first of them is a modification of the law respecting complicity. Our juridical readers will recollect that, by the common law, any 'person, who, knowing a felony to have been committed, receives, relieves, comforts, or assists the felon,' is styled an accessory after the fact, and in most cases subjected to the same punishment as the principal offender.\* By the provisions of the new code of Louisiana, such an act is to cease to be criminal in relations of the principal in the ascending or descending line, or in the collateral, as far as the first degree, or in persons united to him by marriage, or owing him obedience as a servant.

'Our law now calls for the punishment of acts, which, if not strictly virtues, are certainly too nearly allied to them to be designated as crimes. The ferocious legislation, which first enacted this law, demands, and sometimes under the penalty of the most cruel death, the sacrifice of all the feelings of nature, of all the sentiments of humanity; breaks the ties of gratitude and honor; makes obedience to the law to consist in a dereliction of every principle that gives dignity to man; and leaves the unfortunate wretch, who has himself been guilty of no offence, to decide between a life of infamy and self-reproach, or a death of dishonor. Dreadful as this picture is, the original is found in the law of accessories after the fact. If the father commit treason, the son must abandon or deliver him up to the executioner. If the son be guilty of a crime, the stern dictates of our law require that his parent, that the very mother who bore him, that his sisters and brothers, the companions of his infancy,—should expel nature from their hearts and humanity from their feelings; that they should barbarously discover his retreat; or with in-

\* Blackstone's Com. iv. 37.

human apathy abandon him to his fate. The husband is even required to betray his wife, the mother of his children; every tie of nature or affection is to be broken, and men are required to be faithless, treacherous, unnatural, and cruel, in order to prove that they are good citizens and worthy members of society.' *Report*, pp. 30, 31.

Perhaps the common law goes too far in making it criminal to afford the least aid or shelter to a felon, although it would evidently be difficult to draw the line between those acts which tend, in a greater or less degree, to obstruct the course of justice; but we doubt whether Mr Livingston's amendment would be found safe in operation. If the persons particularized in the code have a right to exercise all their ingenuity, nay, to have recourse to violence itself, to enable their kinsman to elude the pursuit of justice, felons might easily set the laws at defiance. We do not say that the laws ought to go the length of asking a parent to abandon his child, or a husband his wife, much less to assist in their apprehension; it may be wrong to look, in every father, for the stern justice of a Junius Brutus. But we should hesitate in granting men protection and indemnity, while they were rescuing the guilty from that punishment, which the good of society required they should suffer. Besides, Mr Livingston confines the privilege to certain specified relations, leaving cases of other 'ties of gratitude or friendship,' to 'the consideration of the pardoning power.' Now it is clear that the principle, on which Mr Livingston would excuse persons in the cases referred to,—that it is unjust to demand of men to do what is incompatible with the natural feelings of humanity,—applies with equal force to many relations, for which he does not and cannot provide. How often are 'the ties of gratitude or friendship' stronger than those of birth;—and yet he, who should yield to the dictates of nature for the protection of his friend or benefactor, must still be subjected to suffer as an accessory.

Whatever doubt there may be, however, with respect to the expediency of this change, there can be none as to the two next proposed by Mr Livingston. The reasons, which induced him to expunge from his code the act of suicide, and another, whose name ought never to pollute the laws of a civilized people, we think are unanswerable. For his remarks on the latter, we refer to the *Report* itself; on the former, he observes:

‘Melancholy, misfortune, and despair sometimes urge the unhappy to an act, which, by most criminal codes, is considered as an offence of the deepest die ; and which, being directed principally against the offender himself, would have required a separate division, if it had been admitted in this code. It has not ; because its insertion would be contrary to some of the fundamental principles, which have been laid down for framing it.

‘Suicide can never be punished but by making the penalty, whether it be forfeiture or disgrace, fall exclusively upon the innocent. The English mangle the remains of the dead. The inanimate body feels neither the ignominy nor pain. The mind of the innocent survivor alone is lacerated by this useless and savage butchery, and the disgrace of the execution is felt exclusively by him, although it ought to fall on the laws which inflict it. The father, by a rash act of self-destruction, deprives his family of the support he ought to afford them ; and the law completes the work of ruin, by harrowing up their feelings, covering them with disgrace, and depriving them, by forfeiture, of their means of subsistence.

‘Vengeance, we have said, is unknown to our law ; it cannot, therefore, pursue the living offender, much less, with impotent rage, should it pounce like a vulture on the body of the dead, to avenge a crime which the offender can never repeat, and which certainly holds out no lure for imitation. The innocent, we have assumed, should never be involved in the punishment inflicted on the guilty ; but here not only the innocent, but those most injured by the crime, are exclusively the sufferers by the punishment. We have established, as a maxim, that the sole end of punishment is to prevent the commission of crime ; the only means of effecting this, in the present case, must be by the force of example. But what punishment can be devised to deter him, whose very crime consists in the infliction upon himself of the greatest penalty your law can denounce ? Unless, therefore, you use the hold which natural affection gives you on his feelings, and restrain him by the fear of the disgrace and ruin with which you threaten his family, your law has no effective sanction. But humanity forbids this ; the legislator that threatens it, is guilty of the most refined tyranny ; if he carries it into execution, he is a savage. It is either a vain threat, and therefore cannot operate ; or if executed, with an ill-directed rage, strikes the innocent because the guilty is beyond its reach.’ pp. 35, 36.

The three changes on which we have commented, are omissions of crimes recognized by the common law, as it exists in England and is adopted in most of the United States. The last change in the enumeration of public offences recommend-

ed by Mr Livingston, is the creation of a new class, against the freedom of the press. He remarks :

‘ It has generally been thought a sufficient protection [of the liberty of the press] to declare that no punishment should be inflicted on those who legally exercise the right of publishing ; but hitherto no penalties have been denounced against those who illegally abridge this liberty. Constitutional provisions are, in our republics, universally introduced to assert the right, but no sanction is given to the law. Yet do not the soundest principles require it ? If the liberty of publishing be a right, is it sufficient to say that no one shall be punished for exercising it ? I have a right to possess my property, yet the law does not confine itself to a declaration that I shall not be punished for using it ; something more is done ; and it is fenced round with penalties, imposed on those who deprive me of its enjoyment.

\* \* \*

‘ All violence, or menace of violence, or any other of the means which are enumerated in the code ; all exercise of official influence or authority, which may abridge this valuable privilege is declared to be an offence. Nay, the project which will be presented to you, goes further, and considering the constitutional provision as paramount to any act of ordinary legislation, and consequently that all laws in derogation of it are void ;—it declares all those guilty of an offence, who shall execute any law abridging or restraining the liberty of the press, contrary to the privilege secured by the constitution.’ pp. 39—41.

We confess that this improvement strikes us as being rather fanciful, and, what is worse, as unnecessary and incapable of answering any useful purpose. Mr Livingston cannot be more ardently attached to a free press than ourselves, nor more resolute to maintain it to the best of our ability, in its full integrity, at every hazard. Most fervently do we respond to the declaration of our own constitution, that ‘ the Liberty of the Press is essential to the security of freedom in a state.’ But we think this liberty is sufficiently guarded by the removal of all restrictions on its legitimate use. From whom are we to apprehend any infringement of it, which a penal sanction in the laws could prevent ? Not surely from persons in their private, individual capacity ; because the liberty is of such a nature, that no direct invasion of it can be made by private persons. It is not in the power of man to impede us in the mere publication of our sentiments, by any immediate act, for which the laws do not sufficiently provide. In revenge

of what we have published, or in anticipation of what we intend to publish, he may attack, seize, imprison our persons ; he may denounce our principles and defame our characters ; he may deface or destroy our manuscripts, or sheets, or scatter their fragments abroad to the winds of heaven ; he may break up our apparatus for printing, and disperse our types or shake them together into inextricable confusion : but who would pretend that either of these acts was, properly speaking, an invasion of the freedom of the press ? They are all infringements of the rights of personal security, liberty, or property, for which the comprehensive remedies of the common law already afford adequate redress. No direct attack can be made on the freedom of the press *as such*, but by some branch of the government. Now if the executive or judicial authorities attempt to debar a citizen from the free use of a privilege accorded him by the laws, the injured party may proceed against the wrong-doer as a private individual, amenable, like other individuals, to the municipal laws of his country ; or he may pursue the constitutional remedy of an impeachment of such wrong-doer for the illegal act as perpetrated in his official capacity ; or he may do both ; and in this alternative, he certainly has most ample opportunity to obtain legal indemnification for his injury. In short, there is but one source in our republics, from which any serious attack on the liberty of the press can be rationally apprehended, and that is the legislature. Should our legislative halls ever become a field for the ambitious efforts of unprincipled men, it would evidently be for their interest, and would probably be their endeavor, to abridge and circumscribe the operations of the press, which, if free, could not fail to oppose the most formidable resistance to the execution of any project for subverting the constitution. Now if such a crisis in the affairs of Louisiana should hereafter occur, how is it that the penal denunciations in the new code can chain the hands of the General Assembly ? They do not become incorporated in the constitution. The same power which enacts the code, may repeal it. Nor do we think it sufficient to reply to this objection, as Mr Livingston does, that ‘ the repeal of this part of the code would be an acknowledgment, on the part of those who procured it, that they were hostile to the right secured by the constitution ;’ and that this no representative would dare to avow. If it were reasonable

to suppose this would prevent the repeal of the provisions in question, still it could not prevent the execution of those insidious practices against the freedom of the press, which, our author very justly intimates, are much more to be dreaded than direct and open attacks. Suppose some future legislature should endeavor to abridge and circumscribe the liberty of the press by passing a law to declare certain descriptions of writing libellous. If the law was incompatible with the constitution, it would be merely void, and so could do no harm. If it was constitutional,—if it was a law which it was fully within the authority of the legislature to enact,—we see no way by which Mr Livingston's plan could prevent its being executed; because the courts cannot have a right to animadvert on the legislature for the exercise of a strictly constitutional power. Furthermore, we do not conceive it to be necessary to protect the liberty of the press by penal laws against its infringement. It is no more requisite in this case than it is in order to protect the liberty of conscience—a liberty as dear, unquestionably, to freemen and to Americans, as that of the press. If the laws grant every man the right of enjoying perfect freedom in respect to his religious sentiments so long as the public safety or the corresponding right of his fellow-citizens is not compromised,—his freedom is secure, and he ought to ask for nothing more from the state. So it is, in our opinion, with regard to the liberty of the press. We do not deny that there are many very serious defects in the present law of libel; and we should rejoice to see the leading provisions in Mr Brougham's famous bill for securing the liberty of the press, and preventing its abuses,\* adopted on this side the Atlantic; but we feel satisfied that our present system of laws, when so amended, would abundantly suffice to protect the exercise of this invaluable privilege in its full extent.

We have enlarged on this topic considerably, both because of its importance in itself, and because we entertain such high respect for the judgment and opinions of Mr Livingston, that we were unwilling to differ from him materially without assigning our reasons at some length. Mr Livingston next proceeds to consider a portion of criminal law, which is undoubtedly the most important, namely, the means of securing obedience to its prohibitory and mandatory provisions, or the

\* *Edinburgh Review*, No. 53

punishment of crimes. In this branch of his duty, he investigates his principles with great care and faithfulness, and then fearlessly follows them out through all their consequences.

‘It would be disgusting and unnecessary to pass in review all the modes of punishment, which have, even in modern times, been used, rather it would seem to gratify vengeance, than to lessen the number of offences. A spirit of enlightened legislation, taught by Montesquieu, Beccaria, Eden, and others,—names dear to humanity,—has banished some of the most atrocious from the codes of Europe. But it has happened in this branch of jurisprudence, as it has in most other departments of science, that long after the great principles are generally acknowledged, a diversity of opinion exists on their application to particular subjects. Thus, although the dislocation of the joints is no longer considered as the best mode of ascertaining innocence or discovering guilt; although offences against the Deity are no longer expiated by the burning faggot; or those against the majesty of kings avenged by the hot pincers, and the rack, and the wheel; still many other modes of punishment have their advocates, which, if not equally cruel, are quite as inconsistent with the true maxims of penal law. It may, therefore, be proper to pass some of them in review.’ pp. 43, 44.

We need not follow our author through his exposition of the defects of the ordinary modes of punishment, which the example of Europe has sanctioned too long, but which now meet with few advocates in America. Banishment, deportation, simple imprisonment or imprisonment in chains, confiscation of property, exposure to public derision, labor on public works, mutilation or other indelible marks of disgrace, stripes or the infliction of other bodily pain,—are all of them punishments, which the good sense of the people of our country in general, no less than the sober conviction of men who make this a subject of philosophical inquiry, has almost universally condemned, as alike inconsistent with the principles of justice and humanity, unsuited to the temper of the times, and hostile to the liberal spirit of all our laws, customs, habits, and institutions. Mr Livingston has done, we apprehend, what the great mass of his countrymen will cordially approve, in throwing these altogether out of the question in the compilation of his code; and in abolishing, at the same time, the punishment of death, he has ventured upon the trial of a system, whose efficacy all humane men will rejoice to see thoroughly.



tried, whatever doubt may exist with regard to the issue. For the reason just mentioned, as also that we have heretofore expressed our opinion very fully, in the places referred to at the beginning of this article, on the subject of all the descriptions of punishment discarded by Mr Livingston, but death, we may pass over them here; but we crave the attention of our readers while we enter briefly into the examination of his remarks on this last head. While so many wise and excellent persons continue to think the exigencies of social order require us to stop, in the career of penal reform, at the point beyond which Mr Livingston has dared to go,—we do not feel prepared to urge unreservedly the expediency of abandoning capital punishments; but we desire to state why we rejoice, as we said, that the experiment is about to be tried in Louisiana, and why we wish it might be tried in her sister states.

It is a mistaken but popular notion, arising doubtless from the cruel and sanguinary nature of the punishments which have prevailed in the governments established on the ruins of the Roman empire, that penal denunciations are the principal sanction of the laws, and the great moral machinery for the preservation of the rights of individuals and of the public, in political communities. This degrading view of the purposes of human action is, thank heaven, as false in theory as it is pernicious in effect. The very fact, indeed, that crimes are punished at all affords an unanswerable proof of our position; for if, amid all the bad passions of social man, a redeeming spirit were not abroad in society,—if the principle of virtue in mankind did not overmaster the principle of vice,—if the fear of punishment were the sole or main motive which deterred them from the commission of crime,—it is most clear that penal laws would never be made or executed, because the necessary physical power would be wanting to accomplish that purpose. But the number of men in a community is small, and the situations in almost every man's life are few, where it is only the apprehension of the laws, which deters from the perpetration of crime. No, the great body of the community do not abstain from murder, rapine, and other high-handed offences, because they have the terror of an indictment before their eyes. Men must already be far gone in guilt before they can be fit subjects for the operation of such influences. Their natural abhorrence of crime generally preserves them

from its contamination. And the inference deduced from this fact is confirmed by the circumstance that the hope of reward is the most active stimulant that ever animates the human breast. Justly may we say, *benevolentiae vim esse magnam, metus imbecillam*, as Cicero did, in his Offices, when contrasting the different principles of government pursued in early and later times by the Romans. For if hope be not stronger to impel than fear to deter, what is it that ever prompts men to the commission of crime? Surely they do not violate the sanctity of private property *de pure perte*, and without the expectation of some benefit to be attained; nor do they imbrue their hands in a brother's blood, under the influence of a mere spirit of mischief, or of any inexplicable and mysterious fatality overruling their destiny. Men act from more simple motives. They perpetrate crimes on precisely the same principle of conduct for which we contend as the strongest, and of which many legislators make so little account,—the preponderance of the hope of some good to be gained by the deed, over the fear of the evils which may pursue the doer of it. So true it is that this very fear of punishment, which some would have to be the grand moral arcanum for purifying society of all its noxious propensities, yields, in every case where we can discern the working of these propensities, to the more potent counteracting influence of the hope of reward. In innumerable cases that could be imagined, where the respective influences of the hope of good and fear of evil are placed in conflict, the whole history of human life and conduct evinces, that the stimulating and honorable principle of the hope of reward is far more powerful, than the depressing and ignoble principle of the apprehension of punishment. All our springs of enterprise are set in action by hope; and as it is certain that the race of man goes on constantly improving,—that his soul has that in it which enables it to rise superior to the afflictions and vexations, which ally us to earth,—that under the inspiring auspices of hope, he nerves himself to manly achievement,—in the same degree is it certain that fear is less powerful than hope. If our laws had no better sanction than the punishments detailed in the statutes, the poor expedients of the scaffold or the prison-house, slippery indeed would be the foundation, and frail the fabric of civil order. Fortunately it rests on a firmer basis. The rock of ages, on which it is indestructibly established, is the

integrity and sanctity of public sentiment, the dignity of our nature, the innate and inextinguishable love of excellence of which man's breast is the sanctuary, the desire of deserving and acquiring the love and esteem of our fellows, and, above all, the certainty that virtue is its own reward in this life and the pledge of eternal happiness when we shall have

‘ shuffled off this mortal coil ;’

these are the sources from which our laws derive their surest and strongest sanction.

The false notions which we have endeavored to expose, were, as we said, partly the offspring of that cruel system of penal law, which grew up in a barbarous age, and still endures in too many countries, a monument alike of the ignorance of the fathers and the prejudice of the sons. But there has been a reaction also, and if these laws were originally the rude invention of a ruder people, they have since been perpetuated by the very misconceptions to which they gave rise. For those misconceptions have induced legislators to repose undue reliance upon a mode of internal administration, consisting only of the summary process of severe penal denunciations. Such a theory is radically inconsistent with all sound principles of government ; because it evidently tends to debase the moral sentiment of the people,—to substitute in their minds a set of degrading motives in the place of more worthy ones,—to counteract its own operation by leading to executions so numerous as to engender a savage and hardened national character, or so rare as to reduce the chances of punishment, and thus occasion the laws to be defied with impunity. More than all, and in one word, the theory is pernicious because it produces a waste of power. We hold it to be a fundamental axiom in political science, that no more power is to be applied to any object than is necessary to effect the desired end. Now those laws which proceed upon the hypothesis, that holding up the fear of punishment is the great secret of governing men,—those laws which are lavish in the number or excessive in the degree of the penal inflictions denounced by them against crimes,—those laws which pronounce the punishment of death in any case,—do, as we contend, lie open to this unanswerable objection of a prodigal expenditure of power. We charge all governments, which enact such laws, with violating a maxim as true in politics as in poetry :

*Nec Deus intersit, nisi dignus vindice nodus.*

We say to them : You are false to your duty as lawgivers bound to consult the best interests of your constituents, since, regardless of the value of life, you are culpably lavish of it where its destruction is not needed. You are wasting the means of government, which social union imparts to you to be husbanded with care and cautiously applied. You descend to the *ultima ratio*,—the last desperate remedy of the laws,—the final and fatal exercise of the highest act of human authority,—and you do it when you ought to be exerting the skill of a refined and lettered christian in preventing the crime, instead of wreaking upon the culprit the mere brute force of an uncivilized savage. You have declared, in the words of Beccaria, *una guerra della nazione con un cittadino* ; you, wielding all the power of a mighty people, have levelled it against the devoted head of a solitary citizen, as if there were no means within your reach to secure the nation against the aggressions of individuals but by urging upon them singly a war of extermination.

Our readers will now perceive on what ground we are content to rest the whole dispute ; setting aside for the present all other considerations, we willingly restrict the enquiry to this simple position : The ends of government can be answered by milder punishment than that of death, and therefore it is inexpedient, as an abstract principle of public policy, to inflict the punishment of death. We speak now of the ordinary cases of government ; of course, we do not mean to include in them such extraordinary cases as popular tumults and seditions, in times of general anarchy, when a body of the people have taken up arms against the laws, and can be quelled only by the same means, which would be necessary to repel a foreign national enemy. But we maintain that, in all cases of proper private crime, the infliction of death in sanction of the laws is a waste of power. Those who hold an opposite opinion cannot complain of this view of the subject ; it is conclusive, if true ; and if fallacious, the fallacy must be easy of detection and exposure. Let us examine the doctrine a little more closely, and see whether the inference, which we wish to draw, do not follow inevitably from the premises.

The advocates of the punishment of death in this country are not desirous, we believe, to extend it to more than five or six of the most flagitious crimes, such as treason, murder,

robbery, arson of a dwellinghouse, and a few others of a like dangerous stamp, which, as they contend, the security of society demands should be thus rigorously punished. Now let us suppose that a misguided man, infatuated by the temporary madness of revengeful passions, raises his hand against the life of another ; or urged and goaded on by the stimulus of imperious want, seizes, with licentious rapacity, the gold which fortune has bestowed upon his more prosperous fellow. When the strong arm of the law has arrested the unhappy offender, who, if he deserves to be condemned for his guilt, deserves also to be pitied for his weakness, in what manner shall violated justice visit his crime ? Shall she array herself in wrath, and pursue him with the sternness of private vengeance ? No :—she personates the majesty and integrity of the laws ; it is not for her to indulge in those very passions, which have troubled the world's peace. Shall she presume to scrutinize his heart, and then hurl down her indignation upon the criminality, which she imagines she can discover there ? O no :—she herself does but speak the voice of poor fallible man ; it is not for human justice to assume the attributes or arrogate the prerogatives of heaven. She has detected a member of the community in a daring attack upon its vital interests,—she has apprehended him in arms against the public tranquillity,—she has found him, if you please, throwing off the protection of the laws and overleaping the pale of the social compact. What then ? Shall she serve him as was practised of old in England with outlawed felons, who, having renounced all law, were said to have *caput lupinum* ; shall she declare that he may be hunted down and slain, wheresoever he can be caught, as a beast of prey ? This is what the advocates of capital punishment would have her do ; but surely the national power is most unworthily used, if it be wreaked thus terribly upon the wretch, whom it ought in the beginning to have withheld from committing crime, and whom, now that it is too late to prevent his guilt, it should endeavor to reclaim to society, and enable to atone for his sin by passing the residue of his days in penitence and usefulness.

But we shall be told it is not enough to dispose of this single individual. The good of society requires, when the laws have been violated, that the offender should be so dealt with, as by the salutary influence of his example to deter others

from a repetition of his offence. Although as respects this individual himself, if he stood alone, it would be the right of the government to take measures only to secure his future obedience, yet, as some method must be devised to sanction the laws, the government has a further right to sacrifice him at the shrine of public justice, for the benefit of the community, whose protection he has forfeited. It is at this point,—the comparative force of death as an example,—that our author takes up the argument, which he chiefly confines to this consideration. He contends that the fear of the privation of life does not exert so powerful an influence on the mind as many other motives, which are within the control of a legislator; and that, if you make the spectacle of the infliction of death common, it debases and brutalizes the public sentiment,—if you make it rare, it converts the criminal into a martyr,—and in either alternative does more evil than good. A few extracts will fully explain his ideas on the subject.

‘Let us have constantly before us, when we reason on this subject, the great principle, that the end of punishment is the prevention of crime. Death, indeed, operates this end most effectually as respects the delinquent; but the great object of inflicting it is the force of the example on others. If this spectacle of horror is insufficient to deter men from the commission of slight offences, what good reason can be given to persuade us that it will have this operation where the crime is more atrocious? Can we believe that the fear of a remote and uncertain death will stop the traitor in the intoxicating moment of fancied victory over the constitution and liberties of his country? While, in the proud confidence of success, he defies heaven and earth, and commits his existence to the chance of arms, that the dread of this punishment will check his pride,—force him, like some magic spell, to yield obedience to the laws, and abandon a course which he persuades himself makes a virtue of his ambition? Will it arrest the hand of the infuriate wretch, who, at a single blow, is about to gratify the strongest passion of his soul in the destruction of his deadly enemy? Will it turn aside the purpose of the secret assassin, who meditates the removal of the only obstacle to his enjoyment of wealth and honors? Will it master the strongest passion and counteract the most powerful motives, while it is too weak to prevent the indulgence of the slightest criminal inclination? If this be true, it must be confessed that it presents a paradox, which will be found more difficult to solve when we reflect that great crimes are, for the most part, com-

mitted by men, whose long habits of guilt have familiarized them to the idea of death, or to whom strong passions or natural courage have rendered it in some measure indifferent; and that the cowardly poisoner or assassin always thinks that he has taken such precautions as will prevent any risk of discovery. The fear of death, therefore, will rarely deter from the commission of great crimes. It is, on the contrary, a remedy peculiarly inapplicable to those offences. Ambition, which usually inspires the crime of treason, soars above the fear of death; avarice, which whispers the secret murder, creeps below it; \* \* \* threats of death will never deter men, who are actuated by these passions; many of them affront it in the very commission of the offence, and therefore readily incur the lesser risk of suffering it in what they think the impossible event of detection. But present other consequences more directly opposed to the enjoyments which were anticipated in the commission of the crime, make those consequences permanent and certain, and then, although milder, they will be less readily risked than the momentary pang attending the loss of life. Study the passions, which first suggested the offence, and apply your punishment to mortify and counteract them. The ambitious man cannot bear the ordinary restraints of government,—subject him to those of a prison; he could not endure the superiority of the most dignified magistrate,—force him to submit to the lowest officer of executive justice; he sought by his crimes a superiority above all that was most respectable in society,—reduce him in his punishment to a level with the most vile and abject of mankind. If avarice suggested the murder, separate the wretch forever from his hoard; realize the fable of antiquity; sentence him, from his place of penitence and punishment, to see his heirs rioting on his spoils; and the corroding reflection that others are innocently enjoying the fruits of his crime will be as appropriate a punishment in practical, as it was feigned to be in poetical justice. The rapacious spendthrift robs to support his extravagance, and murders to avoid detection; he exposes his life, that he may either pass it in idleness, debauchery, and sensual enjoyments, or lose it by a momentary pang;—disappoint his profligate calculation; force him to live, but to live under those privations, which he fears more than death; let him be reduced to the coarse diet, the hard lodging, and the incessant labor of a penitentiary.’ pp. 51—55.

After remarking on the importance of adopting some system of punishment capable of reforming the delinquent and of affording room for correcting a false judgment, both of which are precluded by taking away the convict's life, our author

proceeds to consider the influence of the example of capital executions on society at large, in these words :

‘ Another consequence of the infliction of death is, that if frequent it loses its effect ; the people become too much familiarized with it to consider it as an example ; it is changed into a spectacle, which must frequently be repeated to satisfy the ferocious taste it has formed. \* \* \* \* Human sufferings are never beheld for the first time but with aversion, terror, and disgust. Nature has strongly implanted this repugnance on our minds, for the wisest purposes ; but this once conquered, it happens in the intellectual taste as it does in that of the senses ; in relation to which last it is observed, that we become most fond of those enjoyments, which required, in the beginning, some effort to overcome the disgust produced by their first use ; and that our attachment to them is in proportion to the difficulty which was conquered in becoming familiarized to them. Whatever may be the cause of this striking fact in the history of the human mind, its effects ought to be studied by the legislator, who desires to form a wise and permanent system. If the sight of one capital execution creates an inhuman taste to behold another ; if a curiosity, satisfied at first with terror, increases with its gratification, and becomes a passion by indulgence, we ought to be extremely careful how, by sanctioning the frequency of capital punishments, we lay the foundation for a depravity the more to be dreaded, because, in our government, popular opinion must have the greatest influence on all its departments, and this vitiated taste would soon be discovered in the decisions of our courts and the verdicts of our juries.

But if this punishment be kept for great occasions, and the people are seldom treated with the gratification of seeing one of their fellow-creatures expire by the sentence of the law, a most singular effect is produced ; the sufferer, whatever be his crime, becomes a hero or a saint ; he is the object of public attention, curiosity, admiration, and pity. Charity supplies all his wants, and religion proves her power by exhibiting the outcast and murderer, though unworthy to enjoy existence upon earth, yet purified from the stain of his vices and crimes, converted by her agency into an accepted candidate for the happiness of heaven. He is lifted above the fear of death by the exhortations and prayers of the pious ; the converted sinner receives the tender attentions of respectability, beauty, and worth ; his prison becomes a place of pilgrimage,—its tenant, a saint awaiting the crown of martyrdom ; his last looks are watched with affectionate solicitude ; his last words are carefully remembered and recorded ; his last agonies are beheld with affliction and despair ; and after suffering the ignomin-



ious sentence of the law, the body of the culprit, whose death was infamy and whose life was crime, is attended respectfully and mournfully to the grave by a train that would not have disgraced the obsequies of a patriot or a hero. This sketch, though highly colored, is drawn to the life; the inhabitants of one of the most refined and wealthy of our state capitals sat for the picture; and although such exalted feelings are not always excited, or are prudently repressed, yet they are found in nature; and in whatever degree they exist, it cannot be doubted that in the same proportion they counteract every good effect, that punishment is intended to produce. The hero of such a tragedy can never consider himself as the actor of a mean or ignoble part; nor can the people view, in the object of their admiration or pity, a murderer and a robber, whom they would have regarded with horror, if their feelings had not been injudiciously enlisted in his favor. Thus the end of the law is defeated, the force of example is totally lost, and the place of execution is converted into a scene of triumph for the sufferer, whose crime is wholly forgotten, while his courage, resignation, or piety marks him as the martyr, not the guilty victim of the laws.' pp. 59—63.

Our author next goes into a variety of considerations in support of his views, all tending to show that the infliction of death at any time as a punishment is unnecessary, impolitic, unjust and hurtful to the good order of society. He concedes, however, and we think wisely, that governments have an undoubted right to inflict it, provided it can be proved necessary to the preservation of public and private peace. There is little use in the distinction of Beccaria on this subject. This eloquent and ingenious apostle of the cause of humanity distinguishes, it well known, the right of governments, which he defines to be the sum of the smallest portions of the private liberty of each citizen, (*una somma di minime porzioni della privata libertà di ciascuno*)—from the power, which grows out of the supreme law of the safety of the people (*la suprema legge della salvezza del popolo*.) Now this distinction, as its author understood it, however unsound, is a perfectly innocent one, because, although he denies the right of a state to inflict death as a punishment, yet he grants the existence of the power, wherever its exercise can be proved useful and necessary, and therefore leaves the argument just where it would have been without the distinction.\* But his disciples by los-

\* De' Delitti e delle Pene, c. 28. See also Beccaria's *Risposta ad uno New Series, No. 16.* 34

ing sight of the true grounds of the distinction, have strangely misapplied it, in maintaining that capital punishments ought to be abolished for the mere reason that the right to kill cannot, as they say, have been comprehended among the rights surrendered in the social compact. The only intelligible and defensible notion of political right is, that a state has a right to do whatever, on the whole, the best interest of the community requires. It is idle to set about establishing any distinctions in political science, which do not lead to some valuable practical result. Let the advocates of capital punishments prove their utility clearly; this is all we ask of them; and when this is done, we will not merely concede that it is the right of governments to take away life, but we shall maintain it to be their duty.

Mr Livingston concludes his argument by refuting, with much more eloquence than they deserved to have bestowed upon them, the reasons usually urged in favor of capital punishment independent of the question as to the force of its example. The Jewish laws, which the mild spirit of the Gospel has long ago stripped of their authority as positive institutions, —the practice of most nations from the remotest antiquity, which might, with equal justice, be alleged in vindication of all the worst abuses in government and all the weakest and vil-

Scritto che s'intitola *Note ed Osservazioni sul libro de' Delitti e delle Pene*, pp. 84, 97, where the author explains his sentiments on this point more fully than he did in his first work.—The spirit of the *Note ed Osservazioni* may be judged of by reading a single sentence. 'Quasi tutto quello,' it says, 'che avanza il nostro autore in questo suo libro, non è appoggiato che su *i due falsi ed assurdi principj*, che tutti gli uomini nascono liberi e siano naturalmente uguali, e che le leggi non sono nè debbono esser altro che *patti liberi di tali uomini*, fatti nell'atto che, per motivo di metter la propria vita in maggior sicurezza, si uniscono in società.' p. 248.—This book, which rings all the changes upon the now exploded prejudices of the last century, shows with what kind of reception the plainest maxims of civil liberty were then apt to be greeted in Italy. How revolting to see the rack and the gibbet elaborately defended in Italy, and in the precincts of imperial Rome, who, during two hundred and fifty years of her greatest glory, when her magistrates and nobles were coming or had come to be princes of the earth by the mere force of their private virtues and public patriotism, would not suffer the infliction of the punishment of death on a citizen, ('non crudelis, sed aliena a republica,' Sallust. *Bell. Catilin.* c. 51);—Rome, within whose walls the great orator declared the sight, the very mention of a gibbet unworthy of a freeman and a Roman! ('Carnifex vero, et obductio capitis, et nomen ipsum crucis, absit non modo a corpore civium Romanorum, sed etiam a cogitatione, oculis, auribus: harum enim omnium rerum, non solum eventus atque perpersio, sed etiam conditio, expectatio, mentio ipsa denique, indigna cive Romano atque homine libero est.' Ciceron. *Orat. pro C. Rabirio*, c. 5.)

est prejudices in the whole category of human error,—and the danger of innovation in an age and a country, which owe whatever is most admirable in science or the arts and in social condition to the irrepressible workings of the genius of improvement, objections such as these to abolishing the punishment of death have but a poor chance of success in America. What then are the substitutes proposed to supply the place of the old system of punishment discarded as so objectionable? They are :

‘Pecuniary fines.—Degradation from office.—Simple imprisonment.—Temporary suspension of civil rights.—Permanent deprivation of civil rights.—Imprisonment at hard labor.—Solitary confinement during certain intervals of the time of imprisonment to be determined in the sentence.

The advantage of this scale of punishment is, that it is divisible almost to infinity; that there is no offence, however slight, for which it does not afford an appropriate corrective; and none, however atrocious, for which, by cumulating its different degrees, an adequate punishment cannot be found.” p. 83.

We have followed Mr Livingston so closely thus far, that, for what remains of his code, where there is less of novelty and more of the uncontested principles of law, we content ourselves with referring to the pages of the Report. We have been attracted to the discussion of the subject by the consideration that even at this day, widely and profoundly as the researches of philosophers have been pushed, there is still much to learn of a subject, which embraces the entire range of man's actions, his physical and moral constitution, habits, feelings, propensities, destiny ;—which ascends to the palaces of the rich and powerful, but disdains not to search the cottage of the meanest villager, in quest of useful illustrations ;—which lays bare alike the heart of the prince and the peasant, the weak and the mighty, to scrutinize the inmost recesses of the human breast, and view there, undisguised, the passions, the master-springs, that move the vast machinery of the world ;—which is of the most deep and vital interest to society, inasmuch as it involves the great question of the preservation of social tranquillity, security, and order, and of the moral discipline of the whole human race. Nor is it the intricacy of the subject alone, that renders it inexhaustible. Where truths in the science of remedial law are so clearly demonstrated as to

be fundamental axioms, still the improvements, which they dictate, remain to be adopted, and men yet obstinately and pertinaciously cling to their inveterate prejudices. The names of two hundred capital offences continue recorded in the statute-book of England. In that country, ministerial influence has not yet ceased to elude, nor ministerial sophistry ceased to resist, the repeal of laws the most absurd in principle, the most pernicious in operation.\* But in America, all the most odious features in the penal laws of our father-land, with but few exceptions, have yielded themselves up, and what remains cannot long maintain itself in opposition to the healthful influences of the young Spirit of Freedom. Our emancipation from the tyranny of the feudal institutions is fast approaching its full accomplishment. And Mr Livingston's code, although confined in the immediate sphere of its operation to Louisiana, will sensibly contribute, we doubt not, to the diffusion of an unexceptionably liberal system of criminal law throughout the United States.

---

ART. XIII.—*Friedrich von Schiller's Gedichte*.—*Schiller's Minor Poems*.

THE genius of Schiller never appears more pleasing or more admirable, than in his minor poems. While the enthusiasm of his own character is very happily expressed in them, and the reflections of a vigorous and well educated mind are joined to the most various kinds of poetic invention, his language is uniformly pure and his style exquisitely finished. We have the elevated sentiments of a poet, conveyed with careful elegance in the most beautiful measures of which the copious German dialect admits, and his pieces are uniformly remarkable for the charm of their numbers and diction. In poetry so much depends on the choice of words, that this alone would ensure him a high reputation. But it is the least praise of Schiller. He is no less distinguished for his genius and the purity of his taste, than for the perfection of his style. In the early part of his literary career, his works were the productions of a mind, which seemed always in a state of excitement. They possess all the vehemence of passionate description, but in his

\* Debate in the House of Commons, May 21, 1823.